IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3004 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMPRAKASH SHIVRAM GUPTA

Versus

STATE OF GUJARAT

Appearance:

MR RAJEEV I CHOPRA for Petitioners

Mr. S.T. Mehta, APP for Respondent.

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 12/12/2000

ORAL JUDGEMENT

Rule. Learned A.P.P. Mr. S.T. Mehta waives service of rule on behalf of the respondent-State.

The petitioners have prayed to quash and set aside the proceedings of Sessions Case no.332/98 pending before the learned Addl. Sessions Judge, City Sessions Court, Ahmedabad, Court no.20, and to discharge the petitioner as accused of the said case. The petitioners

have prayed in the alternative that alleged charge under Sec.152 of the Indian Railways Act levelled against the petitioners be quashed and set aside and the learned Addl.Sessions Judge, Ahmedabad be directed to send back the matter of Sessions Case no.332/98 to the Metropolitan Magistrate Court, Ahmedabad, for final disposal.

2. The petitioners were initially charged for the offences made punishable under Secs.461, 380, 427 read with Sec.114 of the Indian Penal Code and also under Secs.152, 153 and 154 of the Indian Railways Act. That the charge-sheet was filed in the Court of Metropolitan Magistrate, Ahmedabad vide CR no.I 112/97. During the hearing to state the charge to the accused, it was brought to the notice of the learned Metropolitan Magistrate that offences made punishable under Sec.152 being exclusively triable by the Sessions Court, the matter is required to be committed to the City Sessions Court, Ahmedabad, and as such, the Metropolitan Magistrate Court committed the case to the City sessions Court, Ahmedabad and forwarded the papers alongwith the accused. That the City Sessions Court, Ahmedabad registered the case as Sessions Case no.332/98 against the petitioners and transferred the matter to the Court of Addl. City Sessions Judge, Court no.20.

That the petitioners moved application Exh.3 for framing charge and trial on 1st February, 2000 contending that as per the police papers no offence under Sec.152 of the Indian Railway Act is disclosed against the petitioners and as such, the offences charged against the petitioners not being exclusively triable by the Sessions Court, the case should be sent back to the Court of Chief Metropolitan Magistrate for further proceedings and the accused be discharged.

That the learned Addl. Sessions Judge, City Sessions Court, Court no.20, Ahmedabad rejected the said application of the petitioners vide impugned order dated 17-4-2000 and kept the matter for framing charge, and thereby, the petitioners have approached this Court by way of the present petition.

3. The prosecution case, in nutshell, could be stated as under:

One Dhanabhai D. Macwan-the Chief Luggage Clerk, Ahmedabad Railway Station, Ahmedabad, filed a complaint at Railway Police Station, Ahmedabad, which was registered vide CR no.I 112/97 on 6-4-1997. It is alleged in the said complaint that on 5-4-1997 when he was on duty on platform no.10 of Ahmedabad Railway

Station, train no.801 Up came from Bhavnagar and at around 20.20 hrs., it proceeded to Nandol Dehgam. That the train stopped after travelling approximately 100 ft., and as such, the complainant made enquiries and found that seal of luggage bogie bearing no.33625 was broke open and three persons one of whom was Tunda and other two unknown who could be identified by him were dropping parcels outside the bogie. That the parcel being heavy, some of the parcels got trapped between the platform and the railway track. That the persons who were dropping the parcels from the luggage bogie having seen the complainant, bolted from the bogie and ran away. Thereafter, the train again started, but on account of obstruction caused by the thrown out parcels, first two bogies after the engine were derailed and the goods packed in the parcels were spread over the railway track. That thereby, railway suffered the damage which would be assessed by his department and the estimated damage shall be submitted subsequently. The complainant stated that no passenger is hurt on account of said derailment, however, train no.804 Dn was required to be cancelled. The complainant has further stated that those persons who were throwing parcels from the railway bogie were used to be engaged by Marfatia, Mukesh and Madhavan and they were committing theft, as without the permission of the authority, they broke open the seal and were removing the parcel from the bogie. That on account of their mischievous act, railway has suffered damage and the life of passengers were endangered, and hence, the complaint.

That the PSI, Ahmedabad Railways registered the said complaint which was investigated and the petitioners were arrested in connection with the said crime. That the chargesheet was filed against the petitioners for the offences made punishable under Secs.461, 380, 427 read Sec.114 of IPC as well as under Secs.152, 153 and 154 of the Indian Railways Act;

4. The petitioners have produced police papers supplied alongwith the chargesheet vide pages 21 to 45 of the file and one PSI P V Champavat posted at Nadiad has filed affidavit-in-reply which is taken on record.

The provisions of Secs.152 of the Indian Railways Act, 1999 are extracted hereinunder:

"152. Maliciously hurting or attempting to hurt persons travelling by railway:-

If any person unlawfully throws or causes to fall or strike at against, into or upon any rolling stock

forming part of a train, any wood, stone or other matter or thing with intent or with knowledge that he is likely to endanger the safety of any person being in or upon such rolling stock or in or upon any other rolling stock forming part of the same train, he shall be punishable with imprisonment for life, or with imprisonment for a term which may extend to ten years.

5. It is true that as per Schedule II of the Code the offence made punishable under Sec.152 of the Railways Act, 1989 is exclusively triable by the Court of Sessions. However, the offences made punishable under Sec.461, 380, 427 read with Sec.114 of the Indian Penal Code and under secs.152-153 of Railways Act,1989 are not triable by Sessions Court but by the Court of Chief Judicial Magistrate or Metropolitan Magistrate as the case may be. On perusal of the police papers, it prima facie appears that no offence under Sec.152 is disclosed as there is no material to show that the petitioners/accused unlawfully threw or caused to fall or strike against into or upon any rolling stock forming part of a train, any wood, stone or other matter or thing with intent or knowledge that he is likely to endanger the safety of any person being in or upon such rolling stock or in or upon any other rolling stock forming part of the same train. In the instant case, the facts emerging from the police papers disclose that the parcels thrown by the persons committing theft have accidently fallen and were entrapped between the platform and the railway track which caused derailment of two bogies after the engine, when the train was put into motion for further journey. Under the circumstances, the learned Addl. Sessions Judge while passing the impugned order dated 17-4-2000 below Exh.3 has erred in holding that police papers disclose the offence charged against the petitioners-accused made punishable under Section 152 of the Indian Railways Act, 1989.

6. It could not be disputed by the learned A.P.P. that parcels thrown by persons committing theft in a railway bogie were thrown with intent to commit theft only and there is nothing in the police papers from which a reasonable inference could be drawn that the accused intended to fall such parcel on a railway track so as to cause derailment of the bogie, and thereby, offence made punishable under Sec.153 and 154, IPC would also not be attracted. In view of the said fact, the petition is required to be allowed. Hence, following orders are passed:-

The impugned order dated 17-4-2000 passed by the

learned Addl. Sessions Judge, City Sessions Court, Ahmedabad, Court no.20, below Exh.3 in Sessions Case no.332/98 is hereby quashed and set aside.

The registration of Sessions Case no.332/98 is also quashed and set aside and the criminal case arising from CR no. I 112/97 registered at railway Police Station, Ahmedabad, is ordered to be sent back to the Court of Chief Metropolitan Magistrate for further prosecution in accordance with law. It is clarified that the petitioners-accused shall be at liberty to make submission before the Court of Metropolitan Magistrate when plea is to be recorded to claim discharge or for dropping of the proceedings on the basis of facts emerging from the police papers.

Rule is made absolute to the aforesaid extent only.

(A.K.Trivedi,J>

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